IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.07.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.A.No. 1130 of 2006
and WP.No.24160 of 2006

Jayalakshmi ... Appellant/Petitioner in wp 24160 of 06

-vs-

1.The State of Tamil Nadu
rep. By its Secretary
Public Department
Secretariat, Fort St. George
Chennai 600 009.

2.The Commissioner of Police
Office of the Commissioner of Police
Egmore, Chennai 600 008.

3.The Inspector of Police
P.3, Vyasarpadi Police Station
Vyasarpadi, Chennai.

4.Chinnapandian
5.Thirunavukkarasu
6.Kumar
7.Ravi
8.Sampath ... Respondents/Respondents.

Writ Appeal filed under Clause 15 of Letters Patent against the order of the learned single Judge dated 31.07.2006 made in M.P.No.1 of 2006 in W.P.No.24160 of 2006.

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 to 8 to pay a sum of Rs.10,00,000/-(Rupess Ten Lakhs only) as compensation to the petitioner for the death of her brother and subsequently direct the second respondent to initiate appropriate disciplinary action against the respondents 3 to 8.

For appellant/petitioner :: Ms. D. Geetha
For respondents .. Mr. Raja Kalifullah
Government Pleader for R.1 to R.3
Mr. L. Chandrakumar for R.4, R.6 and R.7
Mr. R.C. Paul Kanakaraj for R.5 and R.8

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COMMON JUDGMENT

(DELIVERED BY P.JYOTHIMANI,J.)

This appeal is directed against the order of the learned single Judge dated 01.076.2006 made in M.P.No.1 of 2006 in W.P.No.24160 of 2006, dismissing the above said petition, the petitioner has preferred the above writ appeal.

2. The Writ Petition No.24160 of 2006, is filed for Mandamus, directing the respondents 1 to 8 to pay a sum of Rs.10 lakhs as compensation to the petitioner for the death of her brother and also to direct the second respondent, viz., the Commissioner of Police, Chennai, to initiate appropriate disciplinary action against respondents 3 to 8.

3. The case of the petitioner, as seen in the affidavit filed in support of the writ petition, is that she along with her husband and her brother Pandian were living in Vyasarpadi and the said Pandian, who was aged about 18 years, was working as a helper in the vegetable shop belonging to one Ms.Renuka at New Merginpuram at Vyasarpadi. According to the petitioner, her brother Pandian was having the traits of a woman and later, became a transgender person. By knowing his nature, the third respondent Police has named him as Pandian @ Pottai Pandian in the First Information Report registered in Crime No.614 of 2006.

3 (a). It is the further case of the petitioner that on 01.05.2006 at around 11.00 PM, the police personnel belonging to the third respondent Police Station have come to the house searching for Pandian in the premises stating that one Saranraj had committed theft and to interrogate the same, they wanted to take Pandian and immediately after the whereabouts of the said Saranraj was known, Pandian would be released. It was, based on the said representation, the petitioner has sent her brother Pandian along with the police personnel. The police have produced Pandian along with the said Saranraj before the V Metropolitan Magistrate on 04.05.2006, who has remanded them to judicial custody. On 19.05.2006, her brother was enlarged on bail with condition that he should report before the third respondent, viz., Inspector of Police, P.3 Vyasarpadi Police Station, every day at 10.00 AM. One Police Constable Sampath, the 8th respondent, used to come to the house of the petitioner every day at 8.00 AM and take Pandian to the Police Station and he would be brought back only after 11.00 PM every night. On return, Pandian appeared to be tired and would not take food. It was, on 08.06.2006, when the petitioner insisted the reason, her brother Pandian cried and told her that the police personnel attached to the third respondent Police Station, including respondents 3 to 8 have tortured him and sexually assaulted him every day. When the mother of the petitioner, having come to know about the same, has enquired in the Police Station, she was beaten up.

3 (b). On the said date, viz., on 08.06.2006, when Pandian went to comply with the condition, the 3rd and 4th respondents have threatened that he should not reveal anything to anyone and also threatened that Pandian should not come along with his mother to the Police Station. Therefore, the petitioner used to accompany her brother to the third respondent Police Station. Even on 11.06.2006, the petitioner's brother

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told the petitioner that the police continued the harassment. When the petitioner enquired, 3rd and 4th respondents have abused her and threatened that false cases will be foisted against her, charging her as prostitute.

3 (c). On 12.06.2006, at 8.00 AM, one Anjali Devi, the petitioner's sister-in-law, informed her that the petitioner's brother had poured kerosene and immolated himself inside the third respondent Police Station and he was taken to the hospital by one Guna. When the petitioner went to Stanley Government General Hospital, Chennai, she was directed to go to Kilpauk Government Medical College Hospital, Chennai and found that her brother was treated for the burn injuries in the Intensive Care Unit. When the petitioner enquired the reason, her brother told her that the Sub-Inspector of Police attached to the third respondent Police Station, viz., the 4th respondent herein, has tortured him by inserting the lathi inside his anus and few other police personnel including respondents 3 to 8 have forced him to have oral sex and this was going on for the past two weeks.

3 (d). It is the case of the petitioner that the said Pandian has told her that since he was unable to bear the torture and pain, he bought kerosene and gone to the third respondent Police Station on 12.06.2006, and informed the police that if they fail to stop their harassment and inhuman activities, he would burn himself. On hearing the same, the Writer attached to the third respondent Police Station has laughed at and told him that if he die, no one will be bothered and out of the mental agony and the physical torture of respondents 3 to 8, he has poured kerosene and set fire himself.

3 (e). When the said Pandian was still taking treatment, the 4th respondent along with another Police Constable compelled him to sign blank papers stating that if he does not sign, treatment will be stopped, however, on the advise of the Doctors, the same was prevented. Again, one Thirunavukkarasu, Sub-Inspector of Police attached to Law and Order Department of the third respondent, viz., 5th respondent, approached Pandian and compelled for the signature, which was also prevented by the intervention of the Doctors and Nurses. On the direction of the duty Doctor, the petitioner's brother Pandian has informed the said Thirunavukkarasu about the tortures and atrocities committed by the police personnel attached to the third respondent, including respondents 3 to 8, which were recorded by the said Thirunavukkarasu and after it was read out to him by the Duty Doctor, the said Pandian signed. After the Doctor left, the said Thirunavukkarasu, 5th respondent herein, insisted Pandian to sign a plain white paper and when the said Pandian raised a cry, people assembled and the said Thirunavukkarasu left the place. The petitioner came to know that the third respondent has registered First Information Report against Pandian for an offence under Section 309 IPC, by hiding and ignoring the statement given by Pandian to Thirunavukkarasu.

3 (f) On 29.06.2006, around 2.00 AM, petitioner's brother Pandian succumbed to burn injuries and died in Kilpauk Government Medical College Hospital. According to the petitioner, in spite of the statement given by Pandian about the torture inflicted by respondents 3 to 8, no action has been initiated by the second respondent against the police personnel. In view of the above said factual position, since

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there is misconduct on the part of respondents 3 to 8 and human rights violation, the above writ petition is filed.

4. The respondents have filed a counter affidavit in the writ petition. The case of the first respondent-State is that in respect of a case registered in the third respondent Police Station on 30.04.2006 based on the report of one Nandakumar regarding theft of gold jewels, the said Pandian and Saranraj were secured on suspicion and during interrogation, they have admitted the theft committed by them by breaking open the padlock of a premises, and the gold jewels were also recovered. While it was admitted that the said Pandian has secured bail on condition that he should appear every day, it is the case of the first respondent that he appeared on 07.06.2006 and 08.06.2006, but failed to turn-up between 09.06.2006 and 11.06.2006. It is the further case of the said respondent that when the said Pandian came on 12.06.2006 at 8.00 AM, he was questioned about the failure in not appearing on the previous days and directed to come at 10.00 AM. It is also the case of the first respondent that at about 8.30 AM on the said date, at S.M. Road, the said Pandian has procured kerosene and a match box from the shop of one Ramalingam and poured kerosene upon himself as he approached the Corporation School compound and set fire himself. It is the case of the first respondent that he has sustained 35% burn injuries and admitted in Kilpauk Government Medical College Hospital and the 5th respondent, Sub-Inspector of Police has gone to the hospital and recorded his statement in the presence of a Doctor. Since he has succumbed to the burn injuries, a case filed under Section 309 IPC was later altered into one under Section 174 IPC. It is the case of the first respondent that in the enquiry thereafter, the petitioner told that the said Pandian was an eunuch and he was teased by the prisoners while in remand and he had asked the petitioner to move bail immediately or otherwise he would commit suicide in the jail itself.

4 (a) It is the further case of the first respondent in the counter affidavit that the respondents were not aware of the physical character of the petitioner's brother and even in the remand report and other records of police he was disclosed only as Son of Elumalai. It is the case of the said respondent that in fact the said Pandian was admitted in the Kilpauk Government Medical College Hospital by the petitioner herself. It is also stated that the petitioner's version that the said Pandian made a statement before the Doctor implicating the police is false. It is the case of the said respondent that the said Pandian has never stated anything about the sexual harassment while the statements were recorded before the Ward Doctor of Kilpauk Government Medical College Hospital. It is the further case of the respondent that in the dying declaration the said Pandian never uttered any word against the police or about the alleged sexual harassment when it was recorded by the XXIII Metropolitan Magistrate on 13.06.2006. It is the case of the first respondent that one Asha Bharathi, President of Tamil Nadu Aravanigal Sangam, proposed to conduct a demonstration against the police and after she was explained, she has dropped the proposed demonstration.

4 (b). It is also the further case of the said respondent that one Noori, South India Positive Net Work, met the deceased and also the family members and it was, at her motivation and direction, the frivolous allegations were made against the police for obtaining

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monetary benefits from the Government. The said respondent has also denied all other averments made by the petitioner.

5. In the counter affidavit filed by the third respondent, the third respondent has chosen to state that in respect of the complaint regarding theft of jewels, the Sub-Inspector of Police has secured one Saranraj and Pandian on 04.05.2006 under suspicious circumstances and after interrogation, they have admitted the guilt and the goods were also recovered. It is the case of the third respondent that the said Pandian was arrested on 04.05.2006 and it was informed to the mother of the said Pandian. The third respondent has also stated in the line of the counter affidavit filed by the first respondent about the incident which took place on 12.06.2006 stating that on 12.06.2006, at about 8.30 AM at S.M. Road, the said Pandian has procured kerosene and a match box from the shop of one Ramalingam and poured kerosene upon himself as he approached the Corporation School compound and set himself fire and with 35% burn injuries he was admitted in Kilpauk Government Medical College Hospital by his sister.

5 (a). It is also the case of the third respondent that the petitioner has informed for the first time that her brother was a eunuch and he has informed her that he was teased by the police personnel while in remand and apprehending that he may be sent to jail again, he poured kerosene and set himself on fire. According to the third respondent, neither the deceased has complained of offence of sodomy, nor the post mortem certificate discloses any such injuries on person. It is the case of the third respondent that there was no reason for custodial interrogation to subject the said Pandian for any sexual violation on his person. According to the third respondent, the said Pandian himself did not say anything about sexual harassment while he was giving statement before the Ward Doctor in Kilpauk Government Medical College Hospital when he was admitted on 12.06.2006.

5 (b). It is also the case of the third respondent that Pandian has not stated anything about the alleged sexual harassment in the dying declaration, which was recorded by the Metropolitan Magistrate on 13.06.2006. It is also the case of the third respondent that the Police Station is on the main road easily accessible to the public. It also stated that Tmt. Asha Bharathi, President of Tamil Nadu Aravanigal Sangam wanted to have a demonstration against the police, and the same was dropped after knowing that there was no substance in the allegation. It was one Noori, President, South India Positive Net Work, who has motivated the idea of proceeding against the police.

6. The respondents 4 to 8 have filed their counter affidavit at the writ appeal stage. It is their case that the said Pandian was apprehended along with Saranraj in respect of a theft case and there was a confession. It is also their case that the said Pandian committed suicide on S.M.Road near P.3 Police Station by self-immolation and he sustained 37% of burn injuries. In the statement recorded by the Magistrate in the presence of Doctor, the said Pandian has not complained anything about the alleged harassment. It is the case of the said respondents that the said Pandian died after 17 days of hospitalisation due to burns on 29.06.2006. It is also their case that the petitioner who has made a complaint before the National Commission for Schedule Caste and Schedule Tribes on 10.05.2006, has not raised

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anything about the present allegation against respondents 4 to 8 that her brother was harassed physically and sexually. The said respondents have also stated that when the said Pandian was in judicial custody at Central Prison, Chennai, the petitioner met him on 13.05.2006, and the said Pandian is said to have stated as follows:

> "7. ..... Daily 6, 7 prisoners are trying to misbehave with me and having much pain in the parts to pass urine and motion and the blood was oozing from backside and that he is suffering all these things in a hell and pleaded me to arrange for coming out on bail. I also advised him to give complaint to the jailor for which he said he has already gave complaint to the prison authorities about this for that they stated to him, you are an enunch (impotent) and so you give company to the male persons."

It is also the case of the respondents that the said Pandian took extreme step to commit suicide fearing that due to non-compliance of bail conditions, he would be taken to prison again, where he was forced to do unnatural sex with the prisoners. It is the case of the respondents that a false story has been manipulated against them. In all other respects, the said respondents have denied various allegations made by the petitioner in the writ petition.

7. Pending the writ petition, the petitioner has filed M.P.No.1 of 2006, praying for interim injunction restraining the respondents 3 to 8 from continuing in their official posts and that petition came to be dismissed on 31.07.2006. It was, as against the said dismissal order in the interim application, the petitioner filed W.A.No.1130 of 2006. As per the direction of this Bench, the first respondent has filed a counter affidavit.

8. Pending the writ appeal, this Court has also appointed the Registrar (Vigilance), High Court, to conduct enquiry into the issue relating to the suicide committed by the said Pandian and to submit a report and accordingly, the Registrar (Vigilance) conducted and submitted her report dated 16.02.2007, and the statements of witnesses cited in the report have also been forwarded. In these circumstances, the writ appeal as well as writ petitions were taken together for final hearing. The respondents have also filed their objections to the Enquiry Officer's report stating that the Enquiry Officer's report is one sided.

9. Ms. D. Geetha, learned counsel appearing for the petitioner while taking us through the relevant portions of the enquiry report would submit the following points from the said report, which substantiate the contention of the petitioner about the police harassment. The Commissioner appointed by the Court has found that the entries relating to non-appearance of Pandian between 09.06.2006 to 11.06.2006 are unnatural and abnormal comparing the G.D. Entries relating to 09.06.2006, 10.06.2006, 11.06.2006 and 12.06.2006 and therefore, the entries create suspicious circumstances in the commission of suicide by the deceased Pandian.

" (i) The Commissioner found that Dr.Megajabin,

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the Doctor who first admitted the said Pandian in the hospital gave a copy of the Accident Register marked as Document No.18 and in the document it is stated that the said deceased has burnt himself by setting fire in P.3 Police Station at 8.30 AM, and in the said document the Commissioner found the word "in" before P.3 police station was struck off and instead, the words, "near P.3 police station and near S.M. Road" were inserted.

(ii) She would also submit that the Commissioner has found that Noori, examined as witness No.22 who visited the said Pandian at hospital has stated that when she visited Pandian he was crying and when she asked as to how the incident took place, Pandian has stated that he had gone to the police station to comply with the bail condition imposed by the Magistrate and at that time the police personnel caused sexual harassment to him and hence he was forced to commit suicide. She also stated that since the police authorities were watching their conversation, she returned. She also stated that the names of the persons that the said Pandian disclosed to her were, Sampath, Thirunavukarasu and one another. Therefore, according to her, the report prima facie reveals that the said Pandian was instigated to commit self-immolation only by the conduct of the respondents 4 to 8. "

10. On the other hand, Mr. L.Chandrakumar, learned counsel appearing for respondents 4 to 8 would submit that the report is one-sided. He would state that Asha Bharathi examined as Witness No.44 was satisfied that there was no truth in the allegation of harassment and therefore, she has gave up her idea to protest against the police atrocities. According to the learned counsel, the Commissioner appointed by the Court has only focused at the witnesses who have spoken against the police, and therefore, according to him, the allegation as if the respondents 4 to 8 were involved in harassing the deceased has no basis and therefore, contended that the writ petition has no substance and may be dismissed.

11. We have heard the learned counsel for the petitioner in the writ petition as also the learned Government Pleader apart from the learned counsel appearing for respondents 4 to 8 and perused the entire records, including the report submitted by the Commissioner appointed by this Court and also the statements.

12. On perusal of entire records, we are prima facie satisfied that excesses have been committed by the respondents and we have no doubt to arrive at the conclusion that the suicide committed by Pandian was only in consequence of the conduct of the respondents, especially respondents 4 to 8.

13. On the facts and circumstances of this case, it is not in dispute that the said Pandian, brother of the petitioner was a

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transgender/Aravani and in respect of the complaint given by one Nandhakumar, he was taken for interrogation on 04.05.2006 by R.3 Police Station. Even though the report of the Commissioner shows that the plea of confession by the said Pandian and seizure based on the said confession is stated to be false on materials, the fact remains that in respect of that incident, the said Pandian was released on bail on 18.05.2006 on condition that he should appear before the third respondent Police Station every day and the said order was intimated and followed from 07.06.2006.

14. It is also the admitted case of the respondents that the said Pandian has appeared before the third respondent Police Station on 07.06.2006 and 08.06.2006, while it is the case of the respondents that he did not appear between 09.06.2006 and 11.06.2006. Thereafter, it was on 12.06.2006, as it is found by the Commissioner, as per the Document No.69, viz., General Diary Extract (GDE), the said Pandian has appeared before the third respondent Police Station at 8.00 AM and the case of the respondents is that as per the order of the Court he should appear at 10.00 AM, and therefore, he was asked to come at 10 O'clock and in the meantime, at 8.30 AM, he has self-immolated himself. The case of the petitioner is that from the date when the said Pandian was taken for interrogation on 04.05.2006, the police personnel attached to the third respondent Police Station, who are mentioned as respondents 4 to 8 have harassed him by sexual abuse taking advantage of the fact that he happened to be a trans-gender. The Commissioner in her report would state that the General Diary Extract for the three dates, viz., 09th, 10th and 11th of June, 2006, the dates on which the said Pandian was stated to have not appeared before the third respondent Police Station is unusual, since in respect of 09.06.2006, an entry is made as if Pandian has not appeared and likewise in the entry for 11.06.2006 also, there is an endorsement, but the same was not available for 10.06.2006. Taking into account that in the General Diary, for the previous date, there was no entry about the appearance of Pandian and in respect of some other person, viz., Ravi, such entry was not available, the Commissioner has concluded that the averment in this regard may not be acceptable.

15. It is relevant to note that when the said Pandian was allowed to sign the register as seen in Document No.64 on 08.06.2006 at 9.15 AM, why he was not allowed to sign when the Pandian is stated to have appeared before the third respondent Police Station on 12.06.2006 at 8.00 AM. It is also relevant to note that the reason for the said Pandian to commit self-immolation on 12.06.2006 can be gathered from the factual position and also from the enquiry report. Nevertheless, it is true that there is a contradiction in the entries themselves. That apart, in respect of the place of occurrence, there are three versions, namely,

> "(i)the occurrence is stated to have taken place in front of Corporation School at Vyasarpadi, V. Kalyanapuram Sathya Nagar Road;
> (ii) the incident is said to have taken place on 12.06.2006, inside the third respondent Police Station; and
> (iii) the incident is said to have taken place in front of the third respondent Police Station.

However, one can easily see, as it is seen from the report of the

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Commissioner, that the incident of self-immolation of the said Pandian has taken place in front of the third respondent Police Station, and we are certainly able to see from the report of the Commissioner that the respondents have attempted to create certain documents to show as if the incident has not taken place in front of the police station. The Document No.18, which is the Accident Register copy relating to Pandian as found by the Commissioner contains the statement, "that the alleged burns by self-immolation at 8.30 AM by pouring kerosene on himself and set fire by himself today near P3 Police Station", has been subsequently converted by adding "near P.3 Police Station and near S.M. Road".

16. The case sheet in respect of said Pandian marked as Document No.25 also shows that the suicide attempt has taken place in front of the police station. In addition to that, Dr.Angelin Selvaraj, who has given evidence as Witness No.24 has also stated that she was told by Pandian himself when she was in-charge of ICU Ward in Kilpauk Government Medical College Hospital on 12.06.2006 at 9.20 AM that he has self-immolated himself opposite to P.3 Police Station. The same has also been corroborated by another Dr.Megajabin, who was the first Doctor treating him. Therefore, the finding that the occurrence in which the said Pandian has poured kerosene and set fire himself has taken place opposite to the third respondent Police Station at 8.30 AM is clear. On documents, it is found and it is also not in dispute that the said Pandian came to the Police Station on 12.06.2006 at 8.00 AM and he was directed to come back at 10.00 AM and in the meantime, within half-an hour, he has attempted to commit suicide and ultimately he died on 29.06.2006. As it is seen from the report, even though there is no eye witness to speak about the harassment caused to the said Pandian by respondents 4 to 8, there are abundant circumstantial evidence to prove that the averment made by the petitioner in the writ petition are prima facie correct. The witness by name Janaki, whose evidence is in fact relied upon by respondents themselves, clearly says that on 12.06.2006 at 8.30 AM Pandian came to her shop and at that time he was in a disturbed mood.

17. That apart, another witness Noori, has clearly stated that when she visited Pandian, he was crying. When she enquired Pandian, as to how this incident had happened, the said Pandian told her that when he has gone to Police Station to comply with the bail condition imposed by the Magistrate, the police personnel had caused sexual harassment to him which forced him to commit suicide. She has also stated that Pandian has disclosed the names of the police personnel as Sampath and Thirunavukarasu, who are the respondents 8 and 5 respectively.

18. That apart, the complaint given by the deceased Pandian himself is clear that when he went to the police station on 12.06.2006, the Writer in the police station has threatened him that he will be sent to jail since he has not complied with the condition and immediately thereafter, he went out of the police station and purchased kerosene and set himself fire, and the said complaint given by Pandian on 12.06.2006 is Document No.26.

19. In addition to that, the dying declaration recorded by the Metropolitan Magistrate, who was examined as Witness No.23, clearly shows that the said Pandian has given statement before the Magistrate to

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the effect that for the past one month he was harassed by the police. It is also seen that in the dying declaration, he has stated that the police has threatened him that a false case will be foisted against him and heckled at him that he is an Aravani and it was due to that reason, he has committed suicide by drowning himself to kerosene and set fire.

20. In addition to that, one Chandramohan, who has given evidence as Witness No.2 has clearly stated that he being a Columnist of a weekly issue "Netrikkan", having come to know about the incident, went to Kilpauk Government Medical College Hospital on 14.06.2006 and met Pandian and on enquiry, the said Pandian has told him, as per the condition for bail, when he went to the police station to sign the register, the police officials, viz., Kumar, Ravi, Sampath and Chinna Pandian (respondents 6, 7, 8 and 9 respectively) and another policeman, whose name is not known, apart from three other police constables have committed physical and sexual assault and that the sexual assault continued till 11.06.2006 and he was unable to bear the same. He has further stated that Pandian told him that he has informed the same to his sister (petitioner herein) and on 12.06.2006 and when he went to the police station, the Sub-Inspector of Police, Chinna Pandian (4th respondent herein) has teased him as transgender (thlh xd;gJ) apart from using filthy language and in fact, he has told the said Sub-Inspector, if he continues the same, he will commit suicide for which also the said Sub-Inspector Chinna Pandian, 4th respondent herein has heckled him, and immediately thereafter, he came out and poured kerosene and set himself fire. It is also astonished to note that the said Chandramohan has stated as informed by Pandian that the police have threatened him that if he is not co-operating for the sexual harassment committed by respondents 4 to 8, they would foist a false case of prostitution against his sister (petitioner herein) and mother Gowri. Even though the Enquiry Officer has not believed this witness in respect of the place of occurrence as stated by him, considering the totality of the situation which we have narrated above, there are abundant evidence to show that the respondents 4 to 8 have in fact committed drastic inhuman violence on the body of the petitioner's brother Pandian, which is not only a human right violation, but also not expected of the police personnel like respondents 4 to 8, who are to safeguard the interest of the public. Further, the report of the Commissioner is also clear by referring to various other witnesses like Venkatesh, examined as Witness No.21, who has also corroborated, and therefore, we have no hesitation to come to the conclusion that only because of the conduct of respondents 4 to 8, the said Pandian has attempted to commit suicide and ultimately succumbed to the injuries on 29.06.2006, and the same has happened due to the conduct of respondents 4 to 8, which is unbecoming of police officials and they are deserved to be condemned and are liable for suitable action in the interest of maintaining decency, discipline and civilisation among the disciplined force like, the Police Department.

21. It is also relevant to point out, at this stage, that based on the complaint given by the deceased Pandian, no action has been taken by the respondents. The seriousness of this sort of harassment by the disciplined force has been dealt with by the Apex Court in series of cases. In P. Rathinam vs. Union of India and others reported in 1989 Suppl. (2) SCC 716, the Supreme Court while dealing with the victim of rape, has directed the State to pay interim compensation of Rs.20,000/-

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with permission to her to apply to the Supreme Court for further compensation after the criminal trial reaches its finality.

22. While dealing with the defence of principle of sovereign immunity claimed by such Government servants in respect of the act done by them during the course of their work, in Nilabati Behera (Smt.) @ Lalita vs. State of Orissa and others reported in 1993 (2) SCC 746, the Supreme Court has held that in such cases where the death was unnatural, the burden is clearly on the respondents to explain how the deceased sustained those injuries which caused his death and unless a plausible explanation is given by the respondents, which is consistent with their innocence, the obvious inference is that the fatal injuries were inflicted on the deceased in police custody resulting in his death, for which the respondents are responsible and liable. That was a case of custodial death wherein the Supreme Court has held that there is no doubt that on the facts and circumstances the State Government was liable to pay compensation by holding that the enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention. Award of compensation proceeding under Article 32 or under Article 226 either by Supreme Court or High Court is remedy available in public law based on the principles of strict liability for contravention of fundamental rights to which the principles of sovereign immunity does not apply even if such defence is available in a private law in an action on tort, while holding that the award of compensation is justifiable. In the following dictum in Rudul Sah vs. State of Bihar (1983 (4) SCC 141), the Supreme Court has held as follows:

> "... The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justified award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental rights is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226, for contravention of fundamental rights. Certain further observations in Rudul Sah which may tend to minimise the effect of the principle indicated therein,do not really detract from that principle. This is how the decisions of the Supreme Court in Rudul Sah and others in that line have to be understood and Kastuilal distinguished therefrom."

23. In a recent judgement rendered in Munshi Singh Gautam (dead) and others vs. State of Madhya Pradesh reported in 2005 (9) SCC 631, while dealing with the police atrocities and custodial violence and deaths, the Supreme Court has observed that there cannot be a direct evidence in such cases due to complicity of police personnel and

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therefore the question of adherence to the establishment of proof beyond every reasonable doubt in such cases would result in miscarriage of justice and making the justice delivery system suspect and vulnerable and if such unrealistic approach is taken, it would only encourage the torture in police custody, since it would reinforce the belief in the mind of the police that no harm would come to them if one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them in the torture. The Supreme Court in the above said judgement, Quoting from Abraham Lingan's words,

> "If you once forfeit the confidence of our fellow citizens you can never regain their respect and esteem. It is true that you can fool all the people some of the time, and some of the people all the time"

Expressing concern at the atrocities perpetuated by the protectors of law, the Supreme Court further held as follows:

> " .... The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime in a civilised society governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. .... "

and ultimately held,

> " .... The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of the judiciary itself, which if it happens, will be a sad day, for anyone to reckon with. "

24. In view of the above said legal precedents, as we have found that prima facie case has been made out by the petitioner that her brother Pandian was harassed by respondents 4 to 8 while working as police officials, the writ petition and the writ appeal stand partly allowed with the following directions:

> (i) The first respondent, State Government shall pay compensation of a sum of Rs.5 lakhs (Rupees five lakhs only) to the petitioner for the harassment meted out to her brother Pandian due to the conduct of respondents 4 to 8 in the course of their functioning as police officials working in P.3 Vyasarpadi Police Station, Vyasarpadi, Chennai;
>
> (ii)The respondents 1 and 2 are directed to initiate disciplinary action against respondents 4 to 8 for the treatment meted out to the deceased Pandian, which resulted in his self-immolation on 12.06.2006 and ultimate death on 29.06.2006.
>
> (iii)It is open to the State Government to take appropriate steps to recover the amount directed to be paid to the petitioner in this order from respondents 4 to 8.

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There is no order as to costs in both the cases. Connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

kh
To

1.The Secretary
State of Tamil Nadu
Public Department
Secretariat, Fort St. George
Chennai 600 009.

2. The Commissioner of Police
Office of the Commissioner of Police
Egmore, Chennai 600 008.

3. The Inspector of Police
P.3, Vyasarpadi Police Station
Vyasarpadi, Chennai.

2 cc to Mr.L.Chadrakumar Advocate SR.NO.41374
1 cc to M/s.D.Geetha Advocate SR.NO. 41566
2 CC TO Govt. pleader SR.NO.41502,41503

SR(co)
RD 19.7.07

W.A.No.1130 of 2006 and
W.P.No.24160 of 2006

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